

## National Labor Relations Board

## § 102.159

### § 102.155 Payment of award.

To obtain payment of an award made by the Board the applicant shall submit to the Director, Division of Administration, a copy of the Board's final decision granting the award, accompanied by a statement that the applicant will not seek court review of the decision. If such statement is filed the Agency will pay the amount of the award within 60 days, unless judicial review of the award or of the underlying decision has been sought.

### Subpart U—Debt-Collection Procedures by Administrative Offset

SOURCE: 62 FR 55164, Oct. 23, 1997, unless otherwise noted.

### § 102.156 Administrative offset; purpose and scope.

The regulations in this subpart specify the Agency procedures that will be followed to implement the administrative offset procedures set forth in the Debt Collection Act of 1982 (Pub. L. 97-365), 31 U.S.C. 3716.

### § 102.157 Definitions.

(a) The term *administrative offset* means the withholding of money payable by the United States to, or held by the United States on behalf of, a person to satisfy a debt owed the United States by that person.

(b) The term *debtor* is any person against whom the Board has a claim.

(c) The term *person* does not include any agency of the United States, or any state or local government.

(d) The terms *claim* and *debt* are synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate Agency official to be owed to the United States from any person, organization, or entity, except another Federal agency.

(e) A debt is considered *delinquent* if it has not been paid by the date specified in the Agency's initial demand letter (§ 102.161), unless satisfactory payment arrangements have been made by that date, or if, at any time thereafter, the debtor fails to satisfy his obliga-

tions under a payment agreement with the Agency.

### § 102.158 Agency requests for administrative offsets and cooperation with other Federal agencies.

Unless otherwise prohibited by law, the Agency may request that monies due and payable to a debtor by another Federal agency be administratively offset in order to collect debts owed the Agency by the debtor. In requesting an administrative offset, the Agency will provide the other Federal agency holding funds of the debtor with written certification stating:

(a) That the debtor owes the Board a debt (including the amount of debt); and

(b) That the Agency has complied with the applicable Federal Claims Collection Standards, including any hearing or review.

### § 102.159 Exclusions.

(a)(1) The Agency is not authorized by the Debt Collection Act of 1982 (31 U.S.C. 3716) to use administrative offset with respect to:

(i) Debts owed by any State or local government;

(ii) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or

(iii) When a statute explicitly provides for or prohibits using administrative offset to collect the claim or type of claim involved.

(2) No claim that has been outstanding for more than 10 years after the Board's right to collect the debt first accrued may be collected by means of administrative offset, unless facts material to the right to collect the debt were not known and could not reasonably have been known by the official of the Agency who was charged with the responsibility to discover and collect such debts until within 10 years of the initiation of the collection action. A determination of when the debt first accrued should be made according to existing laws regarding the accrual of debts, such as under 28 U.S.C. 2415. Unless otherwise provided by contract or law, debts or payments owed the Board which are not subject to administrative offset under 31 U.S.C. 3716

may be collected by administrative offset under the common law or other applicable statutory authority, pursuant to this paragraph or Board regulations established pursuant to such other statutory authority.

(b) Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

**§ 102.160 Agency responsibilities.**

(a) The Agency shall provide appropriate written or other guidance to Agency officials in carrying out this subpart, including the issuance of guidelines and instructions, which may be deemed appropriate. The Agency shall also take such administrative steps as may be appropriate to carry out the purposes and ensure the effective implementation of this subpart.

(b) Before collecting a claim by means of administrative offset, the Agency must ensure that administrative offset is feasible, allowable and appropriate, and must notify the debtor of the Agency's policies for collecting a claim by means of administrative offset.

(c) Whether collection by administrative offset is feasible is a determination to be made by the Agency on a case-by-case basis, in the exercise of sound discretion. The Agency shall consider not only whether administrative offset can be accomplished, both practically and legally, but also whether administrative offset will further and protect the best interests of the United States Government. In appropriate circumstances, the Agency may give due consideration to the debtor's financial condition, and it is not expected that administrative offset will be used in every available instance, particularly where there is another readily available source of funds. The Agency may also consider whether administrative offset would substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated.

(d) Administrative offset shall be considered by the Agency only after attempting to collect a claim under 31 U.S.C. 3711(a).

**§ 102.161 Notification.**

(a) The Agency shall send a written demand to the debtor in terms which inform the debtor of the consequences of failure to cooperate. In the demand letter, the Agency shall provide the name of an Agency employee who can provide a full explanation of the claim. When the Agency deems it appropriate to protect the Government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions.

(b) In accordance with guidelines established by the Agency, the Agency official responsible for collection of the debt shall send written notice to the debtor, informing such debtor as appropriate:

(1) Of the nature and amount of the Board's claim;

(2) Of the date by which payment is to be made (which normally should be not more than 30 days from the date that the initial notification was mailed or hand delivered);

(3) Of the Agency's intention to collect by administrative offset and of the debtor's rights in conjunction with such an offset;

(4) That the Agency intends to collect, as appropriate, interest, penalties, administrative costs and attorneys fees;

(5) Of the rights of such debtor to a full explanation of the claim, of the opportunity to inspect and copy Agency records with respect to the claim and to dispute any information in the Agency's records concerning the claim;

(6) Of the debtor's right to administrative appeal or review within the Agency concerning the Agency's claim and how such review shall be obtained;

(7) Of the debtor's opportunity to enter into a written agreement with the Agency to repay the debt; and

(8) Of the date on which, or after which, an administrative offset will begin.